



California
CREDIT UNION LEAGUE

NEVADA
CREDIT UNION LEAGUE

VIA E-MAIL: regs.comments@federalreserve.gov

April 12, 2010

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1384
Proposed Rule on Third Stage of CARD Act Implementation

Dear Ms. Johnson:

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to provide comments on the Federal Reserve Board's (Board's) proposed rule that will implement the provisions of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) that are effective as of August 22, 2010. The new proposal would implement the provisions of the CARD Act that:

- Permit a credit card issuer to charge a penalty fee only if it is "reasonable and proportional" to the violation of the account terms; and
- Require a credit card issuer to reconsider interest rate increases every six months after the increased rate becomes effective.

By way of background, the California and Nevada Credit Union Leagues (Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

The Leagues are supportive of the Agency's thoughtful, fair, and reasonable approach taken regarding the implementation of these CARD Act provisions. We commend and thank the Board and staff for producing workable and largely balanced regulations from the scope and the short timeframes mandated by the CARD Act. However, we do have concerns and suggestions about several of the provisions that we will share in the balance of our letter.

Reasonable and Proportional Costs – Fees Based on Costs

Under the proposal, one method deemed to be reasonable and proportional in determining a penalty fee is if the fee represents "a reasonable proportion of the costs incurred by the issuer as a result of the specific type of violation." The Leagues understand and agree with this approach, and appreciate the Board's inclusion in the

proposal of the costs that may be considered under this method. However, the proposal does not include in these costs the amount of actual losses (i.e., the amount that a card issuer may have to charge off as a loss). This omission is strikingly unfair and unrealistic; so much so we believe it's not unreasonable to conclude that many card issuers will forsake this method entirely if the proposal is left in its current form. Therefore, if the Board intends to retain this method as a viable option, the Leagues recommend permitting card issuers to include the amount of losses in determining costs.

Safe Harbor Fees

The Board has proposed to establish "safe harbor" penalty fees that would be considered to be compliant with the provisions of the CARD Act. The proposal does not include these fees, but the Board is soliciting input on what the amount should be for these fees.

The Leagues support the establishment of safe harbor fees, and applaud the Board for utilizing the authority granted it in the CARD Act to propose safe harbor amounts. We believe use of this method provides a straightforward, equitable, and compliant option for many card issuers that may not have the size, resources, or expertise to utilize the cost or deterrence methods provided in the proposal. The Leagues also appreciate the Board's acknowledgement in the proposal that many credit unions charge significantly lower late-payment and over-the-limit fees than the larger bank card issuers (\$20 on average, as compared to \$39). This is consistent with multiple surveys over the years that show credit unions charge fewer and lower fees than banks.

However, we do have concerns that the short amount of time provided between issuance of the final rule containing safe harbor amounts and the CARD Act effective date of August 22, 2010 will entail significant challenges and complexities for all card issuers. Further, while the Board has indicated that the final safe harbor amount will be a single penalty fee amount that will generally be sufficient to cover an issuer's costs and to deter violations, the Leagues believe that card issuers should be given an opportunity to comment on amounts proposed by the Board before they are made final. Therefore, we strongly urge the Board to issue the safe harbor penalty fee amounts in proposed form before making them final, with a comment period of at least 30 days. Accordingly, we also recommend that mandatory compliance with such fee provisions be delayed beyond the CARD Act effective date of August 22, 2010—perhaps an additional 60 days. We believe that such a delay is within the Board's authority, as has been recently demonstrated by the Agency's recent delay in implementation of the Unlawful Internet Gambling Enforcement Act regulations.

Multiple Fees Based on a Single Event or Transaction

Regardless of the method chosen to determine a penalty fee, the proposed rules prohibit imposing multiple penalty fees based on a single event or transaction. While we agree with this provision overall, we believe that charging multiple penalty fees should be permissible for situations where a returned payment leads to a late payment situation. In such cases, each activity (i.e., the late payment and the late status) involves separate costs to the card issuer, and each activity involves behavior that a card issuer has an interest in deterring. At the least, we believe that the Board should take such situations into account when establishing safe harbor fee amounts.

Review of Rate Increases

The proposed rule would require card issuers to review an increase in the APR no less frequently than once every six months until the time the rate is reduced to what it was before the increase. Card issuers must reduce the APR based on this review, if appropriate, and the rate must be reduced within 30 days after the evaluation. The Board is requesting comment as to whether this obligation to review increases every six months should end at a certain time period after the rate is initially increased, such as five years, regardless of whether the rate is ever decreased. The Leagues believe that a reasonable and realistic review time period would be a maximum of two years. In addition, we suggest that the 30 day period for reducing a rate when warranted by a review be amended to 45 days to make it consistent with other change-in-terms provisions in the regulation.

In closing, I would like to thank the Board for the opportunity to comment on this final stage of rulemaking for the CARD Act. We appreciate your consideration of our views as you work to craft reasonable, fair, and effective regulations for consumers and financial institutions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long, sweeping horizontal line extending to the right.

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues